

REMARKS

The present amendment is in response to the Office Action mailed March 21, 2006. Independent claim 28 is the only pending claim.

Claim Rejections – 35 U.S.C § 101

Claim 28 has been rejected under Section 101 as being directed to non-statutory subject matter since while the results are admitted to be useful and tangible, they are asserted to not be “concrete.” To be “concrete” it is stated that the process must have a result that can be substantially repeatable or the process must substantially produce the same result again. The Office Action states on page 3 that it is unclear whether the invention of claim 28 can be repeatable and predictable (and thus, concrete). It then asks what concrete, repeatable interpretation of the indicated monetary commentary data is achieved by the invention.

The invention is clearly “concrete” in that the results are repeatable. Using the Telephone Company X example discussed at page 9, line 24 to page 10, line 5 and illustrated in Figure 3, if one large group of consumers during a period of time have a particular collection of experiences with the company so as to produce the results described, there is no reason to expect that if the company continues to interact with its customers in the same manner that a second large group of consumers during an equally long period of time will produce any different result. In the example discussed, the consumers have expressed positive results in the amount of \$4.7 million, and negative results in the amount of \$1.2 million. Using two statistically significant groups of similarly situated consumers drawn from the same population base, the behaviors and reactions of the consumers of each group and their use of the invention will be consistent, at least consistent enough to indicate substantially the same level of consumer satisfaction or dissatisfaction with Telephone Company X. To deny this is to refute the science of statistics and presume that the reactions and behaviors of groups of consumers when experiencing the same stimuli would be random. It is beyond belief to posit that two such groups would produce significantly different results using the process of claim 28.

Of course, if the two groups have a different make up, such as one being English speaking and the other non-English speaking, their experiences with Telephone Company X may be very different, and due to cultural differences they may react differently and behave differently, so under that situation the process of claim 28 should produce different results. Concrete results does not and cannot require that regardless of the nature/composition of the

consumers using the invention and their experiences with the company being rated that the results of the process must be the same. If that were so, processes with concrete results would also be worthless.

It is reasonable to expect that on the average each group would react similarly to the same experience and react similarly when using the process of the invention in terms of the rating given Telephone Company X and the amount of contribution made when having the same experience with Telephone Company X. Of course, if the interaction of Telephone Company X with its customers should change in a manner that generates more or less consumer satisfaction, then the results of using the invention would naturally change and predictably so since the general level of consumer satisfaction or dissatisfaction with Telephone Company X would have changed. As noted above, to be “concrete” only requires the results of the process be “substantially” repeatable – the results do not have to be precisely the same each time.

Another way to view repeatability would be to analyze the results expected should the same group of consumers, based on their experience with Telephone Company X, use two identical processes incorporating the invention, somewhat magically each time using the one process without the use of the other process being a factor. In this instance, the reactions and behavior of groups of consumers would be the same when using each process, so both processes would produce the same result. If consumer A was upset with Telephone Company X and of a mind to give a negative rating and make a \$1 contribution, and other consumers in the group used the same rating and contribution for each of the two processes incorporating the invention, the results would not vary.

Applicant firmly believes his invention will produce repeatable and predictable results when properly considered.

Claim Rejections – 35 U.S.C § 112, first paragraph

Claim 28 has been rejected under Section 112, first paragraph, as failing to comply with the enablement requirement. It is noted that the test of enablement is whether one reasonably skilled in the art could make or use the invention from the disclosure in the patent coupled with information known in the art without undue experimentation. The issue is whether the patent describes the invention adequately that one could make the invention.

The Office Action questions whether the aggregated monetary commentary recited in claim 28 accurately represents the entity's reputation and how one could use the indication of

monetary commentary to arrive at conclusions about the entity's reputation. First, these are not issues of adequacy of enablement. From the disclosure one of skill could certainly build software to implement and use the method for consumer recording and publicly reporting monetary commentary using a commentary reporting service, as described in claim 28. The Office Action is questioning whether the method would accurately representation consumer satisfaction/dissatisfaction, but complete accuracy of result is not a requirement for patentability, and certainly not required to satisfy the enablement requirement. Again, this is not an enablement issue, and to be patentable an invention does not have to meet any specified level of accuracy. Applicant requests this grounds for rejection be removed.

In any event, Applicant will address the concerns expressed in the Office Action with respect to how the aggregated monetary contribution recited in claim 28 accurately represents the entity's reputation and how one could use the indicated monetary commentary to arrive at conclusions about the entity's reputation. First, however, it is noted that the Office Action quotes a portion of a sentence in the specification at page 11, lines 8-10, out of context to support the assertion that the system may or may not more accurately represent consumer satisfaction/dissatisfaction. The full sentence reads (with portion quoted underlined):

"The advantage in requiring a financial contribution by the consumer is that the system 100 may more accurately represent consumer satisfaction/dissatisfaction with an entity if the consumer is required to support that level of satisfaction/dissatisfaction with a financial payment."

Clearly, the sentence does not imply that "the system may or may not more accurately represent consumer satisfaction/dissatisfaction" as stated in the Office Action. Rather, it says just the opposite. It states that by requiring a financial contribution by the consumer the results will be more accurate. Clearly, if a consumer must "put his money where his mouth is", the consumer is less likely to give an insincere positive or negative rating since he has to pay money to give the rating. If there was no cost to the consumer, it would be more likely that insincere consumers would make insincere ratings, and hence reduce the accuracy of the system. However, again, complete accuracy is not a requirement for patentability.

The Office Action goes on to quote from page 15, lines 14-19, of the specification to support the assertion that the invention is not accurate enough to be patentable. First, the Office Action draws an incorrect conclusion from the example quoted. The quoted example merely points out that the data must be correctly interpreted, and to achieve certain information additional statistic drawn from the data should be considered. The example simply illustrates

manners in which the data can be interpreted.

The example quoted by the Office Action from page 15, lines 14-19, of the specification involves a situation where a large number of consumers each make a small (\$1.00) negative contribution (each gives a negative rating and makes a \$1.00 contribution) so the total monetary contribution for the negative rating is \$1,000, and a single consumer makes a large (\$1,000) positive contribution (he gives a positive rating and makes a \$1,000 contribution) so the total monetary contribution for the positive rating is \$1,000. By simply adding the total negative monetary contribution and total positive monetary contribution together, they cancel for a combined total of zero. This does not mean the result is inaccurate. The data can be analyzed different ways. Perhaps a less extreme example will best make the point. Assume one consumer is very upset with the service he received from a business so he gives a negative rating and makes a \$4 contribution, and another consumer is somewhat pleased with the service he received from the business so he gives a positive rating and makes a \$1 contribution. If these were the only two contributing consumers used to determine the reputation of the business, and using only simple addition of the results, the monetary commentary data for the business is a negative rating of \$3. How is this inaccurate if one is using the result to measure overall customer satisfaction with a business? One very strong bad experience should not necessarily be offset by one mildly good experience, or vice versa, as seems to be suggested by the Office Action. If one is interested in measuring overall customer satisfaction in a manner that takes into account the quantitative extent of the bad or good experience, then it is a perfectly accurate measure of reputation that one phenomenally good experience (reflected in a \$1,000 contribution with a positive rating per the example from the specification) should offset when using simple addition the cumulative minor bad experiences of 1,000 customers (reflected in one thousand \$1 contributions with a negative rating per the example from the specification).

Of course, the example quoted by the Office Action from page 15, lines 14-19, of the specification is an extreme situation not likely to happen. In the real world the contributions by consumers, both those giving a negative and those giving a positive rating, will vary in amount and statistically it is unlikely one or even many contributions will be on the negative or positive side in such large amounts to totally offset the results of those “voting” the opposite way. More likely, the distribution of negative and positive ratings and the amounts contributed by each consumer giving a rating, will accurately reflect the reputation of a business in the collective minds of those consumers. For a business conducted in a manner that should have a bad

reputation, there will likely be both more negative ratings given and a higher total amount of contributions made by those consumers giving the negative ratings than the ratings and contributions on the positive side. Naturally, the more people that use the system the better the statistical value of the results, but asserting the invention is inaccurate because of one rather unlikely scenario is like saying all surveys are inaccurate because if you only survey a small group and one person skews the data collected that result lack accuracy.

Further, the material quoted by the Office Action from page 15, lines 14-19 is quoted out of context to support the assertion that the monetary commentary data cannot be accurately interpreted, and therefore does not accurately represent consumer satisfaction/dissatisfaction. A reading of the full paragraph on page 15, lines 6-22, makes clear that should one consider the simple addition of the total negative monetary contribution and the total positive monetary contribution does not give a satisfactory indication of the reputation of a business, the collected data can be used to generate other statistics. For example, on page 15, lines 6-8, the specification states that statistical data may be particularly useful to the user in deciding whether to utilize the service of a business, and at lines 19-21, immediately after the portion quoted in the Office Action, the specification states that statistical data provided by the server may be useful in determining the overall consumer satisfaction and that other known statistical analysis may be performed on the data. It is well within the skill in the art if the system operator believes that having a large contribution of one customer offset smaller contributions of several customers of a business, to set up the system to also supply other monetary commentary data besides just the added total of all contributions, such as the average amount of the positive and negative contributions, or the number of customers making the positive and negative contributions. For example, using the example quoted by the Office Action where a \$1,000 contribution with a positive rating by one consumer offsets 1,000 contributions of \$1 with a negative rating, all that also need be supplied is that the positive rating was based on 1 consumer contribution and the negative was based on 1,000 consumer contributions, or that the average positive rating contribution was \$1,000 per contributor and the average negative rating contribution was \$1 per contributor. Even with the unusual results of the example, this additional monetary commentary data provides a clear representation of the entity's reputation and the data reviewing user can easily arrive at a conclusion about the entity's reputation. All such monetary commentary data is based on the results of aggregating of the monetary contributions from the data inputting users.

At page 14, line 27-page 15, line 5, the specification describes that the CPU in the

server may calculate statistical data, such as the average amount of tips that consumers have made for both building up and building down the reputation, and other statistics, such as the average tip, the minimum and maximum tips, and total number of tips to vote up and down a reputation.

Claim Rejections – 35 U.S.C § 112, second paragraph

Claim 28 has also been rejected under Section 112, second paragraph, as being indefinite because it is asserted to be unclear in claim 28 how the indication of the aggregated consumer monetary commentary data more accurately represents an entity's reputation, apparently because it is not understood how the amount of monetary commentary yields a credibly result.

For brevity, Applicant will not repeat the discussion above with respect to how the aggregated monetary contribution recited in claim 28 accurately represents the entity's reputation and how one could use the indicated monetary commentary to arrive at conclusions about the entity's reputation, or how the process produces repeatable and predictable results. That discuss addresses the issue raised under Section 112, second paragraph and should be considered as part of the response to this issue. However, it might be helpful to refer to the example of Telephone Company X discussed at page 9, line 24 to page 10, line 5 and illustrated in Figure 3, which illustrates in simple fashion one manner in which the process of claim 28 using the aggregated consumer monetary commentary data accurately represents the particular collection of experiences with the company and produces the results that reflect the reputation of the company created as a result of those experiences. It is beyond argument that in the example, where the consumers have expressed positive results in the amount of \$4.7 million, and negative results in the amount of \$1.2 million, that Telephone Company X enjoys a good reputation with its customers. It is not credible to doubt such a conclusion. Of course, as discuss above, additional monetary commentary data could be indicated to users of the process, such as the average amount of the positive and negative contributions, or the number of customers making the positive and negative contributions.

Again, it is stressed that complete accuracy of result is not a requirement for patentability. The process of claim 28 clearly, as described above, can be used to represent an entity's reputation and produces a credible result.

The comment in the Office Action at the top of page 6 that the "Examiner notes, for example, that a person with more means, or a spendthrift-type person is more likely to

contribute a large amount of monetary commentary than a less wealthy person or a more stingy person” is totally unfounded and should be withdrawn. There are no facts in the record to support these conclusions as to consumer behavior or reaction in response to experiences with companies and the present invention. They perhaps reflect the Examiner’s personal preferences and attitudes, but have no bearing on patentability and certainly cannot be considered as based in fact. The further conclusion that “[t]hus the aggregated monetary commentary data may be more related to means and personality variables than to reputation building” is again not supported by any facts in the record and is mere supposition by the Examiner, more reflective of her personal preferences and attitudes than to how consumers will behave or react in response to experiences with companies and the present invention. Even if considered as evidence, which it is not, the statement itself that it may be more, clearly indicates that it also may be less. It is mere unfounded speculation.

Even if there are variations in the amounts individual consumers may contribute when having had the same experience with a company, the results cannot be said to be “more” related to means and personally variables than to reputation building. On what credible basis can the Examiner conclude that the results are more the result of these factors than reflecting the collective experience of the group of consumers.

Further, it would be expected that even with a consumer group made up of people of different means and personality types, some of those with any particular means or personality type would have a good experience and some would have a bad experience, therefore any difference in means or personality type would balance out except to the extent the company interacted with its customers in a manner tending to generate more bad than good consumer experiences, or vice versa. Using the example of Telephone Company X to illustrate the point, it would be unreasonable to believe all persons of financial means would have a good experience, while all persons of limited means would have a bad experience, so the aggregate monetary commentary data would necessarily and inaccurately indicate a good reputation for the company. More likely, as most people realize when dealing with a telephone company, your experience is not necessarily a factor of your financial means. If a telephone company provides poor service, more likely there will be some people of means having a good experience but more having a bad experience. Thus, even if people of means would be willing to contribute more when giving their ratings (and there is no evidence suggesting people with more money would be willing to pay more of it to the operator of the inventive system than any other person), the outcome would still accurately reflect the reputation of the company since

more people of means had bad experiences than good experiences. The same would likely also be true for different personality types.

Favorable reconsideration of claim 28 is requested and a Notice of Allowance is earnestly solicited.

Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 04-0258.

If questions remain regarding the present application, the Examiner is urged to contact the undersigned attorney at (206) 628-7739.

Respectfully submitted,

Anil K. Goyal

DAVIS WRIGHT TREMAINE LLP

By /George C. Rondeau, Jr. Reg. # 28893/
George C. Rondeau, Jr.
Registration No. 28,893

2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688
Phone: (206) 628-7739
Facsimile: (206) 903-3739